

Doc Code: AP.PRE.REQ



PTO/SB/33 (07-05)
Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

062373

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number

10/621,860

Filed

July 15, 2003

First Named Inventor

Andrew R. WEISENBERGER

Art Unit

2856

Examiner

Rodney T. Frank

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 44,450

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

Signature

Thomas E. Brown

Typed or printed name

(202) 822-1100

Telephone number

November 5, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: **Andrew R. WEISENBERGER et al.**

Group Art Unit: **2856**

Application Number: **10/621,860**

Examiner: **Rodney T. Frank**

Filed: **July 15, 2003**

Confirmation Number: **1759**

For: **BUILDING MOISTURE CONTENT CERTIFICATION SYSTEM
AND METHOD**

Attorney Docket Number: **062373**
Customer Number: **38834**

PRE-APPEAL BRIEF – REQUEST FOR REVIEW

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

November 5, 2007

Sir:

This request is being filed concurrent with a Notice of Appeal in compliance with 37 C.F.R. §41.31. Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this Request.

REMARKS

Claims 1, 5-11, 13-18, 27-30, 35-36 are currently pending.

Claims 1, 5-11, 13-18, 27, 28, 35 and 36 stand rejected under U.S.C. §103(a) as being unpatentable over Lee et al; and claims 29-30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee in view of Clemson. Applicants respectively submit that the Examiner has clearly erred in asserting that Lee discloses the limitations of independent claims 1 and 11 as maintained in the Final Office Action dated June 4, 2007.

Specifically, in the Final Office Action, the Examiner asserts that Lee discloses “measuring moisture content levels within structural components of said portion of the interior of the structure, and

providing a report of moisture content level measurements,”¹ and that, “moisture content is determined for structural components of the interior of a structure (see paragraphs [0066] and [0077]).”²

However, it is respectfully submitted that the Examiner is mischaracterizing the teachings of Lee, since while Lee clearly discloses a thermal image sensor that allows an inspector to view and inspect beyond the surface level for evaluation of the temperature profiles of building components due to the difference in thermal properties between building components, it is respectfully submitted that Lee is completely silent with regard to using the thermal image sensor (infrared camera) to measure any type of moisture content levels in the interior portion of the structure.

That is, Lee discloses in part in paragraph [0140] that “[t]he mere presence of moisture within or exterior to a building component does not guarantee that the thermal camera will show that moisture is present.” Further, in paragraph [0140], Lee also discloses that there has to be a way for the evaporation of the water to permit heat loss and, therefore, without the ability to evaporate, water will take on the temperature of the substrate, and the equipment will be blind to the presence of the moisture.

In view of such disclosure, it is submitted that it is clear that Lee is simply not concerned with *measuring a plurality of moisture content levels within said interior portion of the structure*, since Lee can not even guarantee that the mere presence of moisture within a building component can be detected by the thermal camera.

¹ Please, see page 2, lines 18-21 of the Action.

² Please, see page 3, lines 5-7 of the Action.

Moreover, even if, Lee is able to detect the evaporation of water, it is submitted that the user of the thermal imaging sensor would still not be able to determine the moisture content level of the structure which contains the moisture. Instead, the user will only be able see the differences in thermal profiles between building components and conclude that such differences represent the evaporation of moisture. However, no actual measurement or determination of a moisture content level can be made based on the differences in thermal profiles between building components.

As such, it is submitted that Lee is completely silent with regard to using the infrared sensor or thermal image sensor to measure a plurality of moisture content levels within an interior portion of a structure, and determining if each of the plurality of moisture content level is within a desired level, as called for in claim 1.

More specifically, it is submitted that Lee fails to disclose or fairly suggest each of every feature of claim 1 concerning *measuring a plurality of moisture content levels within said interior portion of the structure; determining if each of said plurality of moisture content levels is within a desired level; and issuing a moisture level compliance certificate if the result of said determining step is that each of said plurality of moisture content levels is below the desired level; wherein said measuring step includes taking measurements of said moisture content levels around at least one window frame and at least one door frame, and along at least one floor, at least one wall and at least one ceiling, all of which are included within said interior portion of said structure.*

Draft Pre-Appeal Brief and Request for Review

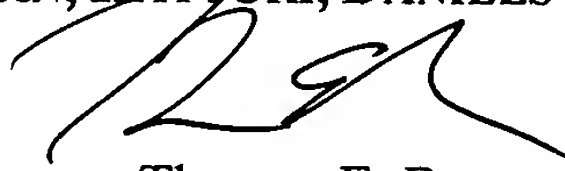
Application No. 10/621,860

Attorney Docket No. 062373

If there are any fees due in connection with the filing of this paper, please charge Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP



Thomas E. Brown

Attorney for Applicants

Registration No. 44,450

Telephone: (202) 822-1100

Facsimile: (202) 822-1111

TEB/mra